



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,941	04/13/2004	Bradley Emalfarb	00254P0076	4428
32116 7590 10/12/2007 WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 10/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/822,941

Applicant(s)

EMALFARB, BRADLEY

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 4,6-8,10-12, and 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,9,13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1761

Applicant's response filed 7/30/07, to the restriction/election mailed 7/16/07, has been received. Applicant has elected Group I, Species A, SubSpecies AI, and additional SubSpecies Ala, with traverse. Applicant does not appear to contest the restriction requirement between the article claims and the method claims, but rather the election of species. Applicant urges that searching the enveloping closure system would logically encompass all different manners of connecting the wall parts. This urging is not convincing. The species differ greatly from each other, including fully encompassing enclosures to partially encompassing enclosures. Also, the species also vary greatly from each other in the type of closure elements recited. Both the enclosures themselves as well as the types of closure elements would require separate searches in disparate classes and even subclasses. For example, the elected invention is directed to the container and an enclosure, but a specific closure element could be in the pocketbook art.

The restriction/election is therefore made FINAL.

In applicant's response, applicant listed claim 19 as being readable on the elected invention and species. Claim 19 depends on claim 18, which recites a fastener, which is not elected. Therefore, the claims readable on the elected invention and species are claims 1-3, 5,9,13, and 14 and claims 4,6-8,10-12,ans 13-21 are withdrawn from further consideration as being drawn to a non-elected invention and species.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1761

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,9,13,and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Large (WO 95/03981).

In regard to claim 1, Large discloses the combination of a container (e.g., bottle #4) having a storage space with a supply of an alcoholic beverage (e.g., beer), having an unopened and an opened state, and a closure system (e.g., bag #6) that is operatively engageable with the container and having first and second different states; the alcoholic beverage confined to the storage space with the container in the unopened state and capable of being dispensed from the storage space for consumption with the container in the opened state; the closure system operatively engaged with the container and in the first state preventing dispensing of the alcoholic beverage in the container from the storage space for consumption, the closure system detectably changeable as an incident of the closure system changing from the first state into the second state in a manner that the closure system cannot be changed from the second state precisely back into the first state, as a consequence of which, it can be determined by inspection that the closure system was changed from the first state into the second state (e.g., page 3, para. 4). In regard to the "whereby" clause at the end of claim 1, this is a statement of intended use, only limiting and only supported by whatever recitations of structure that are recited before the whereby clause. Claim 1 also recites that the container is detectably changeable as an incident of the container being changed from the unopened state into the opened state in a manner that the container cannot be changed from the opened state precisely back into the "opened" (sic) state (presumably,

Art Unit: 1761

"unopened" was intended), which is consequently determinable by inspection. In regard to this last recitation, Large discloses that the bottle can be sealed with a cap that can be a screw-off crown cap. This type of cap meets the recitation immediately above, since once a screw-off crown cap is unscrewed, there would clearly be a detectable difference in resistance of the cap to be unscrewed in the factory sealed cap versus a manually closed cap. Finally, in regard to claim 1, it is noted that Large is considered to meet the phrase "operatively engageable", since this phrase has not been defined in the specification, and since applicant's specification discloses an outer bag and a bottle with a closure and refers to the combination as "operatively engageable". Thus, since Large teaches the same elements in the same relationship, i.e., bottle in bag, the elements of Large are considered to be "operatively engageable". In regard to claim 2, which recites that the closure system comprises a "case" and since applicant's specification includes a bag as a "case", then Large discloses a "case" as well. In regard to claim 3, Large discloses the "case" has a flexible shape (such as a bag). In regard to claim 9, as noted above, Large discloses a cap. In regard to claims 13 and 14, Large discloses the "case" has walls which are bonded together.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1761

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Large, as further evidenced by Replogle et al (2,081,152) and Waters (2,166,513), further in view of Morimoto (JP2001-253452).

Large is applied for the reasons given above. Claim 1, although not using the term, essentially recites a tamper evident packaging system. As evidenced by Large, as further evidenced by Replogle et al and Waters, it was notoriously conventional in the art to provide a contents containing container in an outer bag-type structure which must be noticeably altered to gain access to the inner container and its contents. Claim 5 differs from the combination in the particular closure for the container. That is, claim 5 recites a cork, whereas the combination discloses caps. The particular conventional closure means one chooses to employ is seen to have been an obvious result effective variable and an obvious function of the type of bottle and its contents. In any case, Morimoto discloses that corks, are, of course, conventional in the art. It is also noted that alcoholic beverages such as wine are bottled employing either corks or caps.

The remainder of the references cited on the PTO892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein  
STEVE WEINSTEIN 1761  
PRIMARY EXAMINER  
10/10/07